

1 Whereas, OSMRE's 2008 regulations were consistent with a final
2 decision from the Fourth Circuit Court of Appeals in *Kentuckians*
3 *for the Commonwealth v. Rivenburgh*, 317 F.3d 425, 442 (4th Cir.
4 2003), holding that it is "beyond dispute that SMCRA recognizes the
5 possibility of placing excess spoil material in waters of the
6 United States even though those materials do not have a beneficial
7 purpose" and such regulations helped to significantly reduce
8 regulatory uncertainty brought on by earlier litigation questioning
9 the meaning of the agency's stream buffer zone rule and whether it
10 prohibited valley fills in streams; and

11 Whereas, The Secretary of the Interior attempted to avoid a
12 public rule-making process by asking a court to vacate the 2008
13 OSMRE stream buffer zone rule without public comment as required
14 under the Administrative Procedure Act, but was rebuked by a
15 federal court which ruled that the secretary may not repeal the
16 stream buffer zone rule without going through the rule-making
17 process, including public notice and comment (see *National Parks*
18 *Conservation Association v. Salazar*, 620 F. Supp 2nd 3 (D.D.C.
19 2009); and

20 Whereas, OSMRE, in its own words admitted that before any
21 public comments were even received on its proposals that it had
22 "already decided to change the [stream buffer zone] rule following
23 the change of Administrations on January 20, 2009" (see 75 Fed.
24 Reg. 34,667 (June 18, 2010)) and the agency is calling the new rule
25 the "stream protection rule" (SPR); and further that the stream

1 protection rule is much broader in scope than the 2008 stream
2 buffer zone rule; and

3 Whereas, OSMRE has failed to justify why a new "stream
4 protection regulation" (SPR) is necessary, nor explain the problem
5 that the agency is attempting to fix and such concerns have been
6 echoed by the Interstate Mining Compact Commission, an organization
7 representing state mining regulators with substantial expertise in
8 SMCRA regulation; and

9 Whereas, OSMRE is inappropriately rushing to complete the rule
10 making because the agency committed to a self-imposed deadline of
11 February 28, 2011 to publish a proposed rule through a unilateral
12 settlement agreement with environmental groups. In attempting to
13 meet this artificial deadline OSMRE committed violations of the
14 required National Environmental Policy Act process so flagrant that
15 eight of the state cooperating agencies expressed their serious
16 concerns about the draft environmental impact statement and
17 objecting to its quality, completeness and accuracy, as well as
18 calling the document "nonsensical and difficult to follow," and
19 ultimately threatening to pull out of the process; and

20 Whereas, The coal mining industry is critical to the economic
21 and social well-being of the citizens of West Virginia accounting
22 for high wage jobs, millions of dollars instate and local taxes,
23 and adding billions of dollars to the gross domestic product;
24 therefore, be it

25 *Resolved by the Senate:*

1 That the U.S. Congress is requested to oppose an unwarranted
2 effort by President Barack Obama's administration by withholding
3 further funding for the Office of Surface Mining, Reclamation and
4 Enforcement for the stream protection rule until such time as the
5 agency justifies the need for new rules; and, be it

6 *Further Resolved*, That the Senate expresses its serious
7 concern about the scope, the justification, and the substance of
8 the OSMRE's stream protection rule, as well as to the procedure and
9 process that the agency has been using to implement these
10 regulations and calls upon the agency to immediately suspend work
11 on the environmental impact statement and the regulation until such
12 time as the agency:

13 (1) Clearly and publicly articulates why the 2008 regulation
14 has not been implemented and provides specific details regarding
15 each of its provisions and why the agency believes that they are
16 insufficient;

17 (2) Provides scientific data and other objective information
18 to justify each and every provision of the new proposal;

19 (3) Explains why the agency is contradicting its own annual
20 state inspection reports which indicate good environmental
21 performance and refute the need for this new regulation;

22 (4) Justifies why a more limited approach would not achieve
23 the objectives of the agency; and

1 (5) Surveys all of the state regulatory authorities to
2 determine whether they agree that such significant regulatory
3 changes are necessary; and, be it

4 *Further Resolved*, That the Senate hereby calls upon the House
5 and Senate members in our state delegation in the U.S. Congress to
6 oppose this unwarranted effort by President Barack Obama's
7 administration by withholding further funding for the Office of
8 Surface Mining, Reclamation and Enforcement for the stream
9 protection rule until such time as the agency justifies the need
10 for new rules; and, be it

11 *Further Resolved*, That the Clerk is hereby directed to forward
12 a copy of this resolution to Senator Joe Manchin, Senator Jay
13 Rockefeller, Congressman Nick Rahall, Congressman David McKinley
14 and Congresswoman Shelley Moore Capito.